

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
WILKES-BARRE DIVISION**

In Re:
Lance Robert Kozlowski
Iris Amada Kozlowski

Debtor(s)

CitiMortgage, Inc.
Movant

v.

Lance Robert Kozlowski
Iris Amada Kozlowski

Respondent(s)

Chapter: 13

Case No: 21-00064-RNO

Related to Document No. 6

**MOTION TO AUTHORIZE DISBURSEMENT OF ADEQUATE PROTECTION
PAYMENTS *NUNC PRO TUNC***

CitiMortgage, Inc. (hereinafter, “Creditor”), through its Counsel, Stern & Eisenberg, PC, respectfully requests that this Honorable Court authorize the Chapter 13 Trustee to remit pre-confirmation distributions to Creditor. In support thereof, Creditor respectfully represents as follows:

1. On February 26, 2001, Lance R. Kozlowski signed a note in the principal sum of \$78,500.00 evidencing a loan from CENTURY 21 MORTGAGE in the same amount, secured by the real property located at 982 Effort Neola Road, Stroudsburg, PA 18360, fka Lot #6 Valley View Acres Neola Church Road, Brodheadsville, PA 18322 (hereinafter, the “Property”), as evidenced by a mortgage executed by Lance R. Kozlowski and Iris Kozlowski in favor of CENTURY 21 MORTGAGE, which mortgage is duly recorded with the Recorder of Deeds for Monroe County on February 27, 2001 at Book 2091 at Page 7882 at Instrument No. 200114246.
2. By assignment of mortgage, the mortgage was ultimately assigned to Creditor.
3. Debtor filed the Chapter 13 Bankruptcy Petition on January 13, 2021 and as a result, any State Court proceedings were stayed.

4. On January 13, 2021, Debtor filed a proposed Chapter 13 Plan which proposes to pay Creditor via conduit payments from the Trustee but does not proposed to make adequate protection payments to Creditor.

5. Creditor filed an Objection to Confirmation to Debtor's Chapter 13 Plan on February 4, 2021 as the proposed plan fails to adequately provide for Creditor's secured claim. *See* Doc. 17.

6. Debtor's Chapter 13 Plan proposes to pay Creditor \$75,209.18 over the life of the Plan via conduit payments from the Trustee.

7. This amount is drastically insufficient to cure the pre-petition arrears and satisfy the regular monthly mortgage payments owed to Creditor.¹

8. Debtor's Schedules I and J show that Debtor has an excess monthly income of \$1,442.49 whereas Debtor proposes to pay the Trustee \$1,437.51.

9. As Debtor's Schedules show that Debtor is unable to provide for Creditor's claim in full over the life of the Plan, Creditor seeks adequate protection payments in the amount of \$860.66 per month.

10. Debtor's failure to provide adequate payments to Creditor, and failure to propose a plan that has a reasonable chance of success is a bad faith attempt to delay Debtor's payment of the subject Mortgage.

11. Creditor is not currently receiving any funds to apply towards the subject mortgage and as a result, interest continues to accrue on the subject mortgage and the equity in the Property continues to erode to the detriment of both Debtor and Creditor.

12. Based on the foregoing lack of adequate protection coupled with the low chance of success of the proposed Plan, Creditor moves for disbursement of adequate protection payments in lieu of moving for relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1).

¹ Creditor anticipates filing a Proof of Claim before the established bar date, but the current estimated regular monthly post-petition mortgage payment is \$860.66 and the current estimated pre-petition arrears are \$51,670.96. Excluding interest and assuming the mortgage payment remains the same, Creditor would be owed \$103,310.56 over the life of the Plan which is significantly more than what is proposed in Debtor's current plan.

WHEREFORE, Secured Creditor, CitiMortgage, Inc. respectfully requests that this Honorable Court deny confirmation of the Chapter 13 Plan and dismiss the Chapter 13 Bankruptcy Petition together with such other relief this Court deems necessary and appropriate.

Respectfully submitted,

STERN & EISENBERG, PC

By: /s/ Daniel P. Jones

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Date: February 17, 2021